

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRL.P.No.3301 OF 2017

ORDER:

This criminal petition is filed under Section 438 of Cr.P.C to enlarge the petitioner on bail in the event of his arrest in connection with Crime No.91 of 2017 of Peddapadu Police Station, registered for the offence punishable under Section 353 read with 34 of IPC.

The case of the prosecution is that when the complainant - Village Revenue Officer and Mandal Surveyor of Peddapadu Mandal went to Tallamudi, Peddapadu Mandal to measure land in Survey No.106/2 in an extent of Ac.3.38 cents at Kothavenkanna Cheruvu, as they suspected the same as Government Poramboke land, the petitioner along with others obstructed them from measuring land with the aid of the order of the civil Court in a pending suit from discharging their official duty and on the strength of the same, the above crime is registered.

It is the contention of the petitioner that he filed O.S.No.321 of 2016 before the Senior Civil Judge, Eluru against the District Collector, Revenue Divisional Officer, the Tahsildar and one Dasari Surya Chandra Prakash Rao seeking permanent injunction restraining them from interfering with the peaceful possession and enjoyment of the plaint schedule property in any manner whatsoever, alleging that the petitioner herein is in lawful possession and enjoyment of the property on the date of filing the suit. The Revenue officials and one Dasari Surya Chandra Prakash Rao are making attempts to infringe the legal right of the petitioner. During pendency of the said suit I.A.No.2253 of 2016 in I.A.No.1658

of 2016 under Order 26 Rule 9 of the Code of Civil Procedure was filed to appoint an advocate commissioner to survey, identify and demark the land covered by R.S.No.106/1 and 106/2 of Tallamudi Village with the assistance of Mandal Surveyor, Pedapadu and the said petition was dismissed by order dated 21.12.2016 declining to appoint an advocate commissioner for the above purpose. It is also contended that to circumvent the order passed by the Civil Court, the VRO and Mandal Surveyor are attempting to measure the land. Therefore, such obstruction would not amounts to obstructing the Government servant from discharging his duties and prayed to enlarge the petitioner on pre-arrest bail.

Learned Additional Public Prosecutor opposed the petition on the ground that VRO is public servant and comes within the meaning of public servant under Section 21 IPC and obstructing him from measuring the land amounts to deterring public servant from discharging his duties and there is *prima facie* material against the petitioner for the offence punishable under Section 353 read with Section 34 of IPC.

Undoubtedly, the VRO and Mandal Surveyor are the public servants as defined under Section 21 of IPC. O.S.No.321 of 2016 is pending before the Senior Civil Judge's Court at Eluru and that the District Collector, RDO and Tahsildar are parties to the said suit. But fortunately, the petitioner did not obtain interim injunction under Order 39 Rule 1 of CPC restraining the *de facto* complainant and others from interfering with his peaceful possession and enjoyment of the property. The District Collector and Mandal Surveyor filed an application for appointment of Commissioner to measure the land in Survey Nos.106/1 and 106/2 of Tallamudi to

find out whether the disputed property is Government land or not. When the *de facto* complainants being the Government Officials made an attempt to measure the land with reference the revenue records based on order dated 21.12.2016 in I.A.No.2253 of 2016 in I.A.No.1658 of 2016 in O.S.No.321 of 2016, the petitioner did not allow them to take measurements of the property. Such obstruction caused to the revenue officials from taking measurement of the land to identify the actual land in Survey Nos.106/1 and 106/2 of Tallamudi is nothing but obstruction or deterring to public servant in discharging their duties which is an offence punishable under Section 353 of IPC. Therefore, this Court cannot exercise its discretion to grant pre-arrest bail to the petitioner by exercising power under Section 438 of Cr.P.C. as it finds *prima facie* material against the petitioner that he committed offence and that the investigation is not yet completed. Therefore, I find it is not a fit case to grant pre-arrest bail to the petitioner.

In the result, the criminal petition is dismissed.

Pending miscellaneous petitions in the petition, if any, shall stand closed.

M.SATYANARAYANA MURTHY,J

28.04.2017

kvrn